

04-10135

United States Court of Appeals For the First Circuit

No. 04-2609

JOHN C. VOTTA, JR.,

Plaintiff, Appellant,

v.

MARTHA COAKLEY,

Defendant, Appellee.

Before

Selya, Lipez and Howard,
Circuit Judges.

JUDGMENT

Entered: September 14, 2005

Having carefully reviewed the record in this case, including the briefs of the parties, we affirm the district court dismissal of plaintiff's claim for compensatory and injunctive relief.

Construed liberally, plaintiff's complaint seeks damages for defendant's alleged interference with his ability to challenge in court his previous conviction for assault and battery. However, his appeal of this conviction was heard and rejected by the Massachusetts courts and his request for extraordinary relief before the Supreme Judicial Court is pending. Since plaintiff has not alleged that any viable claim of his has been irrerevocably lost due to defendant's actions, his claim was properly dismissed. See Lewis v. Casey, 518 U.S. 343, 351-55 (1996).

Plaintiff's request for an injunction preventing the defendant District Attorney from opposing his current request before the Supreme Judicial Court is without merit. "[R]ecognition of the need for a proper balance in the concurrent operation of federal

and state courts counsels restraint against the issuance of injunctions against state officers engaged in the administration of the State's criminal laws in the absence of a showing of irreparable injury which is both great and immediate." O'Shea v. Littleton, 411 U.S. 488, 499 (1974). Plaintiff has made no such showing.

"As a general principle, the unfavorable disposition of a plaintiff's federal claims at the early stages of a suit, well before the commencement of trial, will trigger the dismissal without prejudice of any supplemental state law claim." Rodriguez v. Doral Mortg. Corp., 57 F.3d 1168, 1177 (1st Cir. 1995). Therefore, the without prejudice dismissal of plaintiff's state law claims is vacated and the case is remanded to the district court with instructions to dismiss the claim without prejudice to plaintiff's refiling the claim in state court.

So ordered.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

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FIRST CIRCUIT COURT OF APPEALS
BOSTON, MA

By: S. Calardo Date: 9.14.05

[certified copies: Honorable George A. O'Toole, Jr.,
Sarah A. Thornton, Clerk of the District Court of Massachusetts]

[cc: John C. Votta, Jr., David Mark Lieber, AAG]